

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF FRED BRESCH,  
DBA GRAHAM TREE & BRESCH LOGGING  
& HAULING, INC., & AUDREY A. MCGEE,  
  
APPELLANTS,  
  
V.  
  
PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,  
  
RESPONDENT.

PCHB NO. 80-25

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violation of sections 8.05(1) and 9.03(b) of Respondent's Regulation 1, came before the Pollution Control Hearings Board, Nat Washington, Chairman, and David Akana at a formal hearing in Tacoma on May 23, 1980. Hearing Examiner William A. Harrison presided.

Appellants were represented by their attorney, Bryce H. Dille; respondent was represented by its attorney, Keith D. McGoffin.

1 Olympia court reporter Kim Otis recorded the proceedings.

2 Having heard the testimony, having examined the exhibits, and  
3 having considered the contentions of the parties, the Board makes these

4 FINDINGS OF FACT

5 I

6 Appellant Bresch (hereinafter "appellant") owns a seven and one-  
7 half acre parcel of property located at 22811 Meridian Street South in  
8 Graham, Washington. Appellant McGee is the contract seller of the  
9 property. The property is situated within the geographic jurisdiction  
10 of respondent.

11 II

12 Prior to December 18, 1979, appellant cut three trees located on  
13 his property. The tree trunks were gathered together and on December 18,  
14 set on fire by appellant. To aid in the burning of green tree trunks,  
15 appellant had a large number of mill slabs from his nearby sawmill oper-  
16 ation placed around the tree stumps. The mill slabs came from logs  
17 originating from locations other than the above-described property of  
18 appellant.

19 III

20 On December 18, 1979, at about 3:00 p.m., in response to a complaint  
21 of an outdoor fire, respondent's inspector visited appellant's property.  
22 Upon arrival he saw a large pile of materials being burned which appeared  
23 to be mill slabs. He took photographs of the fire and a blue-gray plume  
24 and recorded an opacity reading of 60 percent for 6 consecutive minutes.

25 IV

26 Appellant did not possess a permit for the instant outdoor fire  
27 from either respondent or any other agency.

V

For the foregoing events, appellants were issued a notice of violation and a \$250 civil penalty from which followed this appeal.

VI

Pursuant to RCW 43.21B.260, respondent has filed with the Board a certified copy of its Regulation 1 and amendments thereto which are noticed.

Section 8.05(1) makes it unlawful for any person to cause or allow any outdoor fire other than land clearing burning or residential burning unless prior written approval has been issued by respondent.

Section 1.07(nn) defines "land clearing burning" as an outdoor fire "consisting of residue of a natural character such as trees, stumps, shrubbery or other natural vegetation arising from land clearing projects and burned on the lands on which the material originated."

Section 9.03(b) makes it unlawful for any person to cause or allow the emission of any air contaminant for more than three minutes in any one hour which is of an opacity equal to or greater than 20 percent.

Section 3.29 provides for a civil penalty of up to \$250 per day for each violation of Regulation 1.

VII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 CONCLUSIONS OF LAW

2 I

3 Appellant's fire included a substantial amount of materials  
4 originating from lands other than the property on which the material  
5 originated. Therefore, the fire was not "land clearing burning" as  
6 defined in section 1.07(nn).

7 II

8 Appellant was not conducting "land clearing burning" and did not  
9 have written approval for the instant fire. Therefore, appellant  
10 violated section 8.05(1) as alleged.

11 III

12 Appellant caused or allowed the emission of smoke which exceeded  
13 that allowed by section 9.03(b) and as alleged by respondent.

14 IV

15 In view of the appellant's record of no prior violations of  
16 Regulation 1, and in light of the circumstances of this case, \$200 of  
17 the \$250 civil penalty should be suspended for one year.

18 V

19 Appellant McGee was not shown to have caused or allowed the  
20 alleged violation.

21 VI

22 Any Finding of Fact which should be deemed a Conclusion of Law  
23 is hereby adopted as such.

24 From these Conclusions the Board enters this  
25

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

ORDER

I

The \$250 civil penalty is affirmed as to appellant Bresch, provided however, that \$50 of the penalty is immediately payable and \$200 of the remainder is suspended on condition that appellant not violate respondent's Regulations for a period of one year from the date of this order.

II

The \$250 civil penalty as applied to appellant McGee is stricken.

DATED this 30<sup>th</sup> day of May, 1980.

POLLUTION CONTROL HEARINGS BOARD

  
NAT W. WASHINGTON, Chairman

  
DAVID AKANA, Member

CERTIFICATION OF MAILING

I, Janet L. Huff, certify that I mailed, postage prepaid, copies of the foregoing document on the 30<sup>th</sup> day of May, 1980, to each of the following-named parties at the last known post office addresses, with the proper postage affixed to the respective envelopes:

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POLLUTION CONTROL HEARINGS BOARD